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Supreme Court, U. S.
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IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1949

No. 84

AERO SERVICES, INC., a corporation, debtor,

Petitioner,

vs.

JOHN R. QUINN, County Assessor, and H. L. BYRAM, County Tax Collector, of Los Angeles County,

Respondents.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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WESTERN PRINTING COMPANY, WHITTIER

TOPICAL INDEX

Page

Opinion Below 2

Jurisdiction 3

Question Presented 3

Statement 3

Summary of the Argument 7

Argument 9

I. The reasons alleged for granting the writ are not applicable 9

1. This case is not of far-reaching importance 9

2. The Decision here is not in conflict with decisions of the Supreme Court 10

3. The Decision in this case is not in conflict with that in other circuits 11

II. Petitioner's specification of errors is not sufficient 13

1. Determination of the amount of the tax is not in controversy 13

2. The Decision of the Board of Equalization became final notwithstanding the commencement of bankruptcy proceedings 14

3. The Debtor here had ample opportunity to participate in the hearings 14

4. The case of New Jersey v. Anderson does not apply 14

III. Petitioner's argument fails to show any error in the decision of the Court of Appeals 15

1. The issue before the bankruptcy court here was not the amount of the tax but the redetermination of the assessed valuation 15

2. Petitioner cannot avoid the effect of a quasi-judicial determination by simply failing to appear at the time and place set for the hearing 17

3. Petitioner's argument that the Bankruptcy Court may refer the question to the state tribunal is not in point 23

4. Petitioner's argument about fraud has no application to this case 24

Conclusion 25

TABLE OF CASES AND AUTHORITIES CITED

Cases

Page

Arkansas Corp. Commission v. Thompson (1941), 313 U. S. 132; 61 S. Ct. 888; 85 L. Ed. 1244 ..... 2, 7, 9, 10, 14, 15, 16

Baumann v. Sheehan (1944, C. A., 8th), 140 Fed. 2d 747, 751 ..... 10, 14, 22

Commonwealth of Pennsylvania v. Aylward (1946, C. A., 8th), 154 Fed. 2d 714, 717 ..... 10, 22

Dawson v. County of Los Angeles (1940), 15 Cal. 2d 77 at 81; 98 Pac. 2d 495 18

Eastern Columbia Inc. v. County of Los Angeles (1943), 61 Cal. App. 2d 734, 744-745, 70 P. (2d) 507 21

Fitzgerald v. Herzer (1947), 78 Cal. App. 2d 127, 131-132, 177 P. 2d 364 18

Gardner v. New Jersey (1947), 329 U. S. 565, 67 S. Ct. 467, 91 L. Ed. 504 ..... 2, 7, 10, 13, 15, 16

Globe G. & M. Co. v. Los Angeles Co. (1923), 62 Cal. App. 297, 299, 216 Pac. 631 21

Hagar v. Reclamation Dist. No. 108 (1884), 111 U. S. 701, 710, 4 S. Ct. 663, 28 L. Ed. 569 19

Hammond L. Co. v. County of Los Angeles (1930), 104 Cal. App. 235, 241, 285 Pac. 896 21

In re Aero Services, 75 Fed. Supp. 347 3

In re Guardianship of Jacobson (1947), 30 Cal. 2d 326, 334, 182 P. 2d 545 18

In re Ingersoll Co. (1945, C. A., 10th), 148 Fed. 2d 282, 284 ..... 10, 22

In re Monongahela Rye Liquors (1944, C. A., 3rd), 141 Fed. 2d 864 11

Kelly v. U. S. (1937, C. A., 9th), 90 F. (2d) 73 14

Los Angeles Etc. Co. v. County of L. A. (1912), 162 Cal. 164, 121 Pac. 384, 9 A. L. R. 1277 ..... 20, 21

Luce v. City of San Diego (1926), 198 Cal. 405; 245 Pac. 196 18

Lyford v. New York (1943, C. A., 2d), 137 Fed. 2d 782 12

Mahoney v. San Diego (1926), 198 Cal. 388; 245 Pac. 189 18

New Jersey v. Anderson (1906), 203 U. S. 483, 27 S. Ct. 137, 51 L. Ed. 284 ..... 7, 10, 14

Oakland v. Southern Pacific Co. (1900), 131 Cal. 226, 230, 63 Pac. 371 20

People v. Goldtree (1872), 44 Cal. 323 19

San Jose Gas Co. v. January (1881), 57 Cal. 614, 616 21

Universal Cons. Oil Co. v. Bryam (1944), 25 Cal. 2d 353, 153 P. (2d) 746 20

Statutes and Textbooks

	Page
Bankruptcy Act,	
Sec. 64a(4) (11 U. S. C. A., Sec. 104a(4))	15, 22
Section 312(2) (11 U. S. C. A., Sec. 712(2))	5
Sections 342, 343 (11 U. S. C. A., Secs. 742, 743)	4, 9
Chapter XI (11 U. S. C. A., Secs. 701 et seq.)	2
Chapter XI, Sec. 322 (11 U. S. C. A., Sec. 722)	4
Section 11e (11 U. S. C. A., Sec. 29e)	5
Section 326 (11 U. S. C. A., Sec. 726)	24
California Constitution,	
Article XIII, Sec. 8	3, 4
Article XIII, Sec. 9	21
California Revenue and Taxation Code,	
Sec. 1601	17
Section 441	4
Section 2189	3
Section 1614	5
Sections 1603, 1605	4
Sections 2605, 2617	5
Sections 405, 2192, 117	3
Sections 1601-1615	19
Restatement, Judgments, sec. 68, pp. 294, 302; Note 128 A. L. R. 472, 474	18
3 Cooley, Taxation (4th ed. 1924) sec. 1143, p. 2296	18

IN THE

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OCTOBER TERM, 1948

No. 821

AERO SERVICES, INC., a corporation, debtor,

Petitioner,

vs.

JOHN R. QUINN, County Assessor, and H. L. BYRAM, County Tax Collector, of Los Angeles County,

Respondents.

BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now the respondents, John R. Quinn, County Assessor and H. L. Byram, County Tax Collector of Los Angeles County, and file this brief in opposition to the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, on the ground that there are no special or important reasons for the exercise of the discretion of this Honorable

Court in granting a review on writ of certiorari and on the ground that the decision of the Court of Appeals is correct.

This case involves a simple interpretation and practical application of the rule laid down in *Arkansas Corporation Commission v. Thompson* (1941), 313 U. S. 132, 61 S. Ct. 888, 85 L. Ed. 1244 (and recently explained in *Gardner v. New Jersey* (1947), 329 U. S. 565, 67 S. Ct. 467, 91 L. Ed. 504), to the effect that the bankruptcy court has no jurisdiction to re-determine the assessed valuation of property for county tax purposes, where a valid determination before a quasi-judicial state body has become final. The only difference between that case and this is that in this case the petition under Chapter XI of the Bankruptcy Act (11 U. S. C. A., Secs. 701 et seq.) was filed after the assessment and before the hearing and the Debtor-in-possession with the rights and duties of a trustee failed to appear at the quasi-judicial hearing before the state agency, although it had statutory and published notice and ample opportunity to appear.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 172 Fed. 2d 157 and is also included in the Transcript of Record at page 102. The opinion of the District Court is reported at 75 Fed. Supp. 347 under the name of *In Re Aero Services* and is printed in the Transcript of Record at page 62.

JURISDICTION

Respondents do not claim any defect in the statement of jurisdiction contained in the petition.

QUESTION PRESENTED

The sole question presented is whether the bankruptcy court has jurisdiction to re-determine the assessed valuation of property for county tax purposes after a valid determination by a quasi-judicial state agency has become final according to state law, where the petition in bankruptcy was filed before the date of hearing by the state agency and the trustee or debtor in possession failed to appear at such hearing.

STATEMENT

The facts in the case at bar were undisputed before the referee, and were correctly stated in the opinion of the Court of Appeals, but are erroneously stated by petitioner in his petition and brief in this court.

The first Monday in March is the tax and lien date in California (Calif. Constitution, Article XIII, Sec. 8, Calif. Revenue and Taxation Code, Secs. 405, 2192, 117). On said day the Debtor, petitioner herein, was the owner of the personalty in question and of certain real property in Los Angeles County, on which the personal property tax to be thereafter determined then became a lien. (Calif. Revenue and Taxation

Code, Sec. 2189. T. R., 39). On May 14, 1946, a verified declaration of the property for county tax purposes (as required by the Calif. Constitution, Article XIII, Sec. 8, and by Revenue and Taxation Code, Sec. 441), made on behalf of the Debtor by its auditor, was filed with the County Assessor (T. R., 39). This declaration showed the taxable value of the personal property in question on the first Monday in March, 1946, to be $355,710.00 (T. R., 39). Thereafter, but prior to the first Monday in July, 1946, the County Assessor fixed the value of the personal property in question for county tax purposes at the figure named in the declaration (T. R., 40).

On June 3, 1946, the Debtor, Aero Services, initiated bankruptcy proceedings by filing a petition under Sec. 322 of Chapter XI of the Bankruptcy Act (11 U. S. C. A., Sec. 722. T. R., 2-14) and on the same day the District Court referred the matter to a referee and entered an order permitting Aero Services as a debtor to remain in possession of its assets and carry on its business under the supervision of the court (Bankruptcy Act, Secs. 342, 343; 11 U. S. C. A., Secs. 742, 743. T. R., 39).

On July 1, 1946, the County Board of Equalization commenced its review of all assessments within the county for the purpose of correcting any errors of the County Assessor and for the further purpose of equalizing the assessments (T. R., 40, Calif. Rev. & Tax. Code, Secs. 1603, 1605). The Debtor failed to file an

application for or to appear at the public hearings before this Board to secure a reduction in its personalty assessment (T. R., 40). Accordingly, said assessment at the aforesaid figure became final on or about July 15, 1946. (Calif. Rev. & Tax. Code, Sec. 1614).* Thereafter, a tax bill, based upon the aforesaid assessment, was submitted to the Debtor (T. R., 40).

On November 1, 1946, the county tax upon this personalty became due and on December 5, 1946, it became delinquent (T. R., 40; Calif. Rev. & Tax. Code, Secs. 2605, 2617). The following day, December 6, 1946, the Debtor filed a petition with the Bankruptcy Court for an order directing the County Tax Officers to appear and show cause why the Bankruptcy Court should not redetermine the assessed valuation of the Debtor's personalty for county tax purposes (T. R., 20-22). The order being issued (T. R., 17), the County Tax Officers answered and objected to the jurisdiction of the Bankruptcy Court to make such a redetermination (T. R., 23-35).

The matter was heard before the referee and a stipulation entered into as to the question involved (T. R., 38). The referee found that there was no question or dispute as to the ownership of the personalty in ques-

*Even if it is conceded for the purpose of argument only that the time to appear before the County Board of Equalization was extended by Section 11e of the Bankruptcy Act (11 U. S. C. A., Sec. 29e), it was extended only sixty days subsequent to the date of adjudication, or until August 2, 1946. (Sec. 312 (2), Bankruptcy Act; 11 U. S. C. A., Sec. 712 (2).)

No attempt was made to secure an extension of time for appearance before the County Board of Equalization or to enjoin such hearings. The Debtor did nothing until the following December.

tion; that there were no conflicting liens involved; that there was no error of calculation in determining the tax, but that the sole question was the determination of the value of such property for county tax purposes on the first Monday in March, 1946 (T. R., 41). The referee overruled the objection (T. R., 42-45) and the District Court affirmed the order of the referee (T. R., 61-79 and 91-92 and 75 Fed. Supp. 349).

The County Tax Officers, respondents herein, appealed to the Circuit Court of Appeals for the 9th Circuit (T. R., 80, 93) which reversed the District Court and ordered the proceeding remanded with instruction to dismiss the petition for redetermination in accordance with its opinion (T. R., 101 to 112; 172 Fed. 2d 157). A petition for rehearing was denied March 14, 1949 (T. R., 113). The Debtor, Aero Services, now petitions this Honorable Court for a review by writ of certiorari.

The sole question of law is the jurisdiction of the Bankruptcy Court to redetermine the assessed valuation of the Debtor's personalty for county tax purposes under the circumstances above set forth.

SUMMARY OF THE ARGUMENT

In *Arkansas Corp. Commission v. Thompson* (1941), 313 U. S. 132; 61 S. Ct. 888; 85 L. Ed. 1244, this honorable Court held that the bankruptcy court had no jurisdiction to redetermine the assessed valuation of a railroad which had previously been determined by the Arkansas Corp. Commission, a quasi-judicial body, where the trustee had participated in the hearing but had failed to appeal to the state courts and the decision of the commission had become final. This court distinguished the case of *New Jersey v. Anderson* (1906), 203 U. S. 483, 27 S. Ct. 137, 51 L. Ed. 284, on the ground that the decision there was an administrative and not a quasi-judicial decision, was made arbitrarily without the right to a hearing or to review in the state courts. In *Gardner v. New Jersey* (1947), 329 U. S. 565; 67 S. Ct. 467; 91 L. Ed. 504, this court held that although the bankruptcy court could not redetermine the assessed valuation after a valid determination by a quasi-judicial state agency had become final, certain other questions, such as the priority and extent of liens, the amount of the tax and the compromise or settlement of claims, were within the jurisdiction of the bankruptcy court.

Respondents contend that the decision of the Court of Appeals in the present case is well within the rule of *Arkansas Corp. Commission v. Thompson*, as explained in *Gardner v. New Jersey*. The sole question before the bankruptcy court in this case was the rede-

termination of the assessed valuation of property for county tax purposes. In this case there was a right to a hearing before the County Board of Equalization, a quasi-judicial body, but the Debtor in possession, with the rights and duties of a trustee, failed to appear at the hearing. Respondents maintain that the Debtor cannot avoid the effect of a quasi-judicial determination by failing to appear at the hearing provided by state law. Furthermore, the determination of the county board of equalization became final, notwithstanding the filing of a petition in bankruptcy; and the determination was final before application was made to the bankruptcy court to redetermine the assessed valuation. This being true, there is no special or important reason for granting the writ. The petitioner's specification of error is not well taken and his argument fails to show any error in the decision of the Court of Appeals.

ARGUMENT

I.

THE REASONS ALLEGED FOR GRANTING THE WRIT ARE NOT APPLICABLE

Petitioner alleges that the writ of certiorari should issue because the question involved in this case is of far-reaching importance, the decision of the Court of Appeals is in conflict with decisions of this court and in conflict with decisions of courts of appeal in other Circuits. Respondents maintain that none of these reasons is applicable to this case.

1. This case is not of far-reaching importance

There is but one fundamental factual distinction between the instant case and the case of *Arkansas Corporation Commission v. Thompson* (1941), 313 U. S. 132. In the Arkansas case the trustee in bankruptcy participated in the assessment hearing before the state administrative agency but failed to appeal to the state courts. Here the debtor in possession, with the powers and duties of a trustee (Bankruptcy Act, Secs. 342, 343; 11 U. S. C. A., Secs. 742, 743), ignored the opportunity for a hearing on its assessment before the County Board of Equalization. This factual distinction is, however, without legal consequence. Thus a decision in this case could not be of far-reaching importance in the administration of bankrupt estates and would settle only the question of the application of the

Arkansas case to this particular situation. This question has been decided to the same effect in two other circuits. (*Commonwealth of Pennsylvania v. Aylward* (1946, C. A. 8th), 154 Fed. 2d 714, 717; *In re Ingersoll Co.* (1945, C. A. 10th), 148 Fed. 2d 282, 284; *Baumann v. Sheehan* (1944, C. A. 8th), 140 Fed. 2d 747, 751.

2. The Decision here is not in conflict with decisions of the Supreme Court

The decision in the instant case is not in conflict with the decisions of this Honorable Court. It is merely a simple practical application of the rule of *Arkansas Corp. Commission v. Thompson* (1941), 313 U. S. 132. It is within the holding of *Gardner v. New Jersey* (1947), 329 U. S. 565.

The case of *New Jersey v. Anderson* (1906), 203 U. S. 483, is not applicable because in that case the decision was strictly an administrative decision arbitrarily made without the right to a hearing or to review in the state courts and showed on its face that it was probably in excess of the jurisdiction of the state agency. It was therefore distinguished by this Court in *Arkansas Corp. Comm. v. Thompson,* 313 U. S. 132 at 143 and 144. There is no similarity between the Anderson case and the present case. Petitioner does not question the fact that the County Board of Equalization is a quasi-judicial body under California law. The Court of Appeals so held (T. R., 110, 111; 172 Fed. 2d 157, 161), in accordance with California law (see cases cited in opinion).

3. The Decision in this case is not in conflict with that in other circuits

A careful reading of the decisions cited by petitioner shows that there is in reality no conflict between the decisions in the various circuits on the question presented here.

In re Monongahela Rye Liquors (1944, C. A., 3d), 141 Fed. 2d 864, the assessment was arbitrarily made and the taxpayer had no right to a hearing or to appeal (see 141 Fed. 2d at 868). The court therefore held that the rule of the Anderson case was applicable instead of that of the Arkansas case, and said (141 Fed. 2d at 868):

> "The question in any instance, therefore, is whether the circumstances necessary to justify an exercise of bankruptcy's power to redetermine a tax claim are present. We think they are in the instant case. The taxpayer having failed to file a return, the tax assessments against it were based upon estimated 'settlements' arbitrarily made by the State's Department of Revenue without hearing the taxpayer. . . . From any estimated settlement no right to review or appeal is allowed. . . .
>
> "For the most part, the tax claims in the instant case are based upon such estimated settlements. We think it is plain that the referee's hearing and determination of the amount of tax actually due did not involve a second trial of a controverted fact, such as the exercise of the power entailed in the Thompson case. We are, therefore,

> of the opinion that, under the circumstances here shown, the rule of the Anderson case is applicable and that the referee's redetermination of the Commonwealth's tax claims was a justifiable exercise of bankruptcy's power."

In *Lyford v. New York* (1943, C. A., 2d), 137 Fed. 2d 782, the bankruptcy court had ordered the trustee to appear before the city taxing authorities, who held a hearing on November 12, 1936, but had reached no decision when the trustee on December 1, 1942, requested the bankruptcy court to determine the question. It is thus obvious that there was not and could not have been any final decision by a quasi-judicial state agency which would prevent the bankruptcy court from itself determining the assessed valuation. The court states (in 137 Fed. 2d at pages 786-787):

> "Here there had been no final or conclusive action by the comptroller. Indeed, the very reason for the proceeding is the inaction of the state-taxing authority. The only definite step so far taken has been merely a preliminary one, namely, the ex parte determination of the comptroller, which does not differ from the action of the New Jersey assessors in the Anderson case. Moreover, the questions here involved are questions of law."

No other cases are cited by petitioner as opposed to the decision of the Court of Appeals in this matter and we know of none.

II.

PETITIONER'S SPECIFICATION OF ERRORS IS NOT SUFFICIENT

Petitioner specified four errors, none of which is well taken.

1. Determination of the amount of the tax is not in controversy

Petitioner's first specification is that the Court of Appeals erred in holding that the bankruptcy court had no jurisdiction to determine the *amount* of taxes due. This specification is not in point and has no bearing in this case because the Court of Appeals did not so hold, the question not being before the court since the debtor stipulated and the referee found (T. R., 41) that there was no error of calculation in determining the tax claimed to be due by the County of Los Angeles and that the sole question was the determination of the value of the property for county tax purposes on the first Monday in March, 1946. This court specifically held in *Gardner v. New Jersey* (1946), 329 U. S. 565 at 580, that the bankruptcy court may determine the amount of a tax claimed, but may not redetermine the values underlying the assessments.

2. The Decision of the Board of Equalization became final notwithstanding the commencement of bankruptcy proceedings.

Petitioner's second error specified is in holding that the action of the County Board of Equalization, *subsequent* to the commencement of the bankruptcy proceeding, afforded a proper basis for a plea of *res judicata*. This question was settled in *Arkansas Corp. Commission v. Thompson* (1941), 313 U. S. 132, where the entire tax proceeding had taken place subsequent to bankruptcy. (See also: *Baumann v. Sheehan* (1944, C. A., 8th) 140 F. (2d) 747; *Kelly v. U. S.* (1937, C. A., 9th) 90 F. (2d) 73).

3. The Debtor here had ample opportunity to participate in the hearings

Petitioner's third specification of error is in holding that the rule of *Arkansas Corporation Commission v. Thompson* applied where the tax accrued prior to bankruptcy and no officer of the bankruptcy court participated in or had an opportunity to participate in any hearings before the state board. The factual basis for this specification is entirely erroneous since the Debtor was in possession at all time and had ample opportunity to appear before the County Board of Equalization but failed to do so (T. R., 39-41).

4. The case of New Jersey v. Anderson does not apply

The next specification is the failure to apply the rule of *New Jersey v. Anderson* (1906), 203 U. S. 483.

This case has no application to a factual situation such as this and this honorable court so held in *Arkansas Corp. Commission v. Thompson* (1941), 313 U. S. 132.

III.

PETITIONER'S ARGUMENT FAILS TO SHOW ANY ERROR IN THE DECISION OF THE COURT OF APPEALS.

Petitioner groups his argument under four headings: First, that the Bankruptcy Act confers jurisdiction to determine the amount of taxes due. Second, that there had been no hearing and therefore no basis for a plea of *res judicata* in this case. Third, the bankruptcy court, may, in its discretion refer the question of assessed valuation to the proper state tribunal. And fourth, that if the bankruptcy court is without jurisdiction in the present case, the fraud or other wrongful act of the bankrupt would be beyond the reach of the bankruptcy court. It is submitted that none of these four points is applicable to the facts of the present case.

1. The issue before the bankruptcy court here was not the amount of the tax but the redetermination of the assessed valuation.

It may be conceded that the Bankruptcy Act (Sec. 64a(4), 11 U. S. C. A. 104a(4) confers power on the court to determine the *amount* of taxes due. This court has so held in *Gardner v. New Jersey* (1947), 329 U. S.

565. However, this question is not involved in this case because it was stipulated and the referee found that there was no error of calculation in determining the tax claimed to be due by the County of Los Angeles (T. R., 41) and that the sole question before the court was the determination of the value of the property for county tax purposes (T. R., 41). In *Gardner v. New Jersey,* 329 U. S. 565 at 578-579, this court said:

> "We held in *Arkansas Corp. Commission v. Thompson,* 313 U. S. 132, 85 L. ed. 1244, 61 S. Ct. 888, 45 Am. Bankr. Rep. (N. S.) 462, supra, that the reorganization court lacked the power under Sec. 77 to redetermine for state tax purposes the property value of a railroad where that value had already been determined in state proceedings which afforded ample protection to the railroad's rights. We adhere to that decision. Its ruling precludes redetermination by the reorganization court in this case of the valuations underlying the assessments made by the state authorities and the validity of those assessments used as the basis for the computation of the taxes. It may not therefore entertain the objections to New Jersey's claim which tender those issues. The proper tribunals where those issues may be litigated, if they are still open for any year, are the state agencies and courts and, under special circumstances, the federal courts."

This court then summarized its holding (329 U. S. at 584):

> "We only hold that the reorganization court could properly entertain all objections to the claim

except those involving the valuations underlying the assessments and the validity of those assessments.

"On the present record we do not know all the issues that were involved in the prolonged litigation concerning the taxes for the years in question. Hence, what we have said is subject to the limitation that *res judicata* may have made binding on the reorganization court various questions of local law, including the amount and validity of the taxes under New Jersey law and the character and extent of the lien which that law affords them."

The decision of the Court of Appeals in the instant case that the bankruptcy court may not redetermine the assessed valuation after the decision of a local quasi-judicial body has become final is therefore correct.

2. Petitioner cannot avoid the effect of a quasi-judicial determination by simply failing to appear at the time and place set for the hearing.

Petitioner argues that there had been no hearing and, therefore, there is no basis for a plea of *res judicata*. Even assuming that the rule applied here is solely one of *res judicata* (which respondents do not concede), the premise is not correct. The assessment was made by the County Assessor, the assessment roll delivered to the clerk of the Board of Supervisors who published notice according to law (Calif. Revenue and Taxation Code, sec. 1601). The Board of Supervisors sat as a Board of Equalization during the time pre-

scribed by law (Calif. Revenue and Taxation Code, Sec. 1603) but the debtor failed to appear at the hearings (T. R., 40).

The determination of the assessor thereby became the determination of the Board of Equalization and such determination became final, notwithstanding the non-appearance of the taxpayer, and may not be questioned in any state court.

Dawson v. County of Los Angeles (1940), 15 Cal. 2d 77 at 81; 98 Pac. 2d 495;

Luce v. City of San Diego (1926, 198 Cal. 405; 245 Pac. 196;

(*Compare Mahoney v. San Diego* (1926), 198 Cal. 388; 245 Pac. 189, which involved the same assessment and recovery was allowed where appearance had been made before the Board of Equalization);

3 Cooley, Taxation (4th ed., 1924) sec. 1143, p. 2296.

The situation is comparable to a judgment by default which is a proper basis for a plea of *res judicata* and estoppel.

In re Guardianship of Jacobson (1947), 30 Cal. 2d 326, 334, 182 P. 2d 545;

Fitzgerald v. Herzer (1947), 78 Cal. App. 2d 127, 131-132, 177 P. 2d 364;

Restatement, Judgments, sec. 68, pp. 294, 302; Note 128 A. L. R. 472, 474.

Petitioner apparently concedes that California law provides a valid quasi-judicial remedy through a hearing before the County Board of Equalization with right to subsequent appeal to the California courts. The California assessment procedure requires the County Board of Equalization to give notice of its session and to hold hearings upon every verified written application for reduction in assessment duly presented to it. These hearings must include examination of the applicants under oath concerning the value of their property, and the Board may subpoena witnesses and take evidence as necessary, including that of the Assessor and his staff, who must be present as needed (Calif. Revenue & Taxation Code, Secs. 1601-1615). Clearly this procedure for the review of the correctness of the assessments made by the County Assessor and for their equalization constitutes a valid and constitutional quasi judicial determination. (*Hagar v. Reclamation Dist. No. 108* (1884), 111 U. S. 701, 710, 4 S. Ct. 663, 28 L. Ed. 569). The California cases so hold without exception.

In the early case of *People v. Goldtree* (1872), 44 Cal. 323, the California Supreme Court said at pages 325-326:

> " . . . The Board of Equalization, in passing on the question whether an assessment is too high or too low, *acts in a judicial capacity,* and its decision is an adjudication, and as clearly so as a judgment for the recovery of a tax. . . . " (Italics ours.)

In *Oakland v. Southern Pacific Co.* (1900), 131 Cal. 226, 230, 63 Pac. 371, the settled rule in California was declared to be that the Board could act *only upon evidence* in raising or lowering an assessment.

In *Los Angeles Etc. Co. v. County of L. A.* (1912), 162 Cal. 164, 121 Pac. 384, 9 A. L. R. 1277, the court spoke as follows at page 169 with respect to the function of the County Board of Equalization:

> " . . . . Upon such hearing it is the duty of such board to determine the value of the property under consideration for assessment purposes upon such basis as is used in regard to other property, so as to make all the assessments as equal and fair as is practicable. In discharging these duties *the board is exercising judicial functions,* and its decision as to the value of the property and the fairness of the assessment *so far as amount is concerned* constitutes an independent and conclusive judgment of the tribunal created by law for the determination of that question which abrogates and takes the place of the judgment of the assessor upon that question. . . . " (Italics ours.)

The challenged assessment became final and conclusive upon termination of the County Board of Equalization's Proceedings. The latest case in California enunciating this thoroughly established principle is *Universal Cons. Oil Co. v. Byram* (1944), 25 Cal. 2d 353, 153 P. (2d) 746. There the court stated at page 362:

" . . . As appears from the numerous authorities cited in the forepart of this opinion, the respective county board of equalization is the fact-finding body designated by law to remedy excessive assessments (Cal. Const., art. XIII, Sec. 9), and when that tribunal, after due hearing and within the limits of reasonable discretion, makes its *findings on the facts,* such decision is final and conclusive. . . . " (Italics theirs.)

Like statements of this basic principle may also be found in:

Eastern Columbia, Inc. v. County of Los Angeles (1943), 61 Cal. App. 2d 734, 744-745, 70 P. (2d) 507;

Hammond L. Co. v. County of Los Angeles (1930), 104 Cal. App. 235, 241, 285 Pac. 896;

Globe G. & M. Co. v. Los Angeles Co. (1923), 62 Cal. App. 297, 299, 216 Pac. 631;

San Jose Gas Co. v. January (1881), 57 Cal. 614, 616.

To quote again from *Los Angeles Etc. Co. v. County of L. A., supra,* 162 Cal. 164 at page 168 (121 Pac. 384):

" . . . The law necessarily leaves the determination of the question of fact of value to certain officers, and when it appoints tribunals for that purpose, as in this state primarily the assessor, and, for purpose of review, the board of supervisors acting as a county board of equalization, the conclusion of those tribunals on such a ques-

tion of fact constitutes a judgment that is not collaterally assailable in the courts. This is the universal rule, and it has been so held in this state. (Citing authority.) . . . "

This finality is not affected by the failure of the taxpayer to avail himself of his right to review by the County Board of Equalization. Failure of the bankrupt to take advantage of the remedy provided by California law for the quasi-judicial review of the challenged assessment could not invest the Bankruptcy Court with power under sec. 64a(4) to revise the assessment. This question had previously been settled in two circuits.

Commonwealth of Pennsylvania v. Aylward (1946, C. A., 8th), 154 F. 2d 714, 717;

In re Ingersoll Co. (1945, C. A., 10th), 148 F. 2d 282, 284;

Baumann v. Sheehan (1944, C. A., 8th), 140 F. 2d 747.

The debtor in possession had statutory notice and also notice by publication of the conduct of the hearings. It was his duty to know and he is charged with knowledge of the tax procedure and administrative remedies available. Failing to take such action he was guilty of laches.

Bowman v. Sheehan (1944, C. A., 8th), 140 Fed. 2d 747.

Whether this rule be stated as one of *res judicata,* estoppel, laches, failure to exhaust administrative rem-

edies or jurisdiction, the result is the same: the Bankruptcy Court had no power to proceed to redetermine the assessed valuation in the instant case, after the determination had become final under state law by reason of the failure of the debtor to appear before the Board of Equalization during the time allowed by law. The decision of the Court of Appeals is therefore correct.

3. Petitioner's argument that the Bankruptcy Court may refer the question to the state tribunal is not in point.

Petitioner argues that the bankruptcy court may, at its discretion, refer the question of assessed valuation to the state tribunal for determination. This was the procedure followed in *Lyford v. City of New York* (1943), 137 Fed. 2d 782. However, the argument has no place in the instant case because the bankruptcy court never attempted to refer the question to the County Board of Equalization. It took no action whatsoever until after the decision of the County Board of Equalization had become final under state law and until after any possible extension under the Bankruptcy Act had expired. It then attempted itself to redetermine the assessed valuation. *Universal Consolidated Oil Co. v. Byram* (1944), 25 Cal. 2d 353, 153 Pac. 2d 746, is not in conflict. The Supreme Court of California there remanded the case for further hearing before the Board of Equalization. However, the case had previously been before that Board and appli-

cation to the Board of Equalization had been made within the time allowed by state law. Nothing in either state or federal law authorizes any court to order a hearing or rehearing before the County Board of Equalization, after its decision has once become final. Its decision was final in this case before application was made to the referee. There was no question then to refer. Whether or not a power exists must be determined as of the time of its exercise.

4. Petitioner's argument about fraud has no application to this case

Petitioner argues that if the bankruptcy court is without jurisdiction in this case then fraudulent acts of the debtor or bankrupt would be beyond the reach of the bankruptcy court. This is a non-sequiter and not applicable here. No suspicion of fraud was shown in the hearing before the referee (T. R., 39 to 41). Thus, the question has no bearing in this case. If this were a case of fraud the usual principles of equity would apply, allowing a court of equity to set aside the judgment of the County Board of Equalization for extrinsic fraud, the same as any other judgment, where the application is not barred by laches. However, respondents doubt if the debtor itself could take advantage of its own fraud to secure such action. The Bankruptcy Act (sec. 326; 11 U. S. C. A., sec. 726) provides the proper remedy of the creditors, in case of fraud or neglect of a Debtor in possession under Chapter XI, that is, to have the Debtor bonded at the com-

mencement of proceedings and proceed against the surety on his bond if any loss occurs. This case is not one of an innocent trustee unfamiliar with the Debtor's property, appointed after the assessment and only a few days before the meeting of the County Board of Equalization. Here the debtor itself has been in continuous possession of its property with statutory and published notice of the assessment procedure, and it failed to take the steps that were available to it for the correction of any claimed errors in the assessment.

CONCLUSION

Respondents respectfully submit that there are no special or important reasons for granting the writ; that no errors have been shown in the decision of the Court of Appeals and that the decision of the Court of Appeals is correct and should be affirmed.

Respondents argue that this case is not of far-reaching importance because it is a simple application of the rule of *Arkansas Corp. Commission v. Thompson.* The decision here follows and correctly applies the decisions of this court. Petitioner's specification of errors is not sufficient because the determination of the amount of the tax is not in controversy, the decision of the Board of Equalization became final notwithstanding the commencement of bankruptcy proceedings, the Debtor had ample opportunity to participate in the hearings and the case of *New Jersey v.*

Anderson does not apply. Petitioner's argument fails to show any error in the decision of the Court of Appeals because the sole question before the bankruptcy court was the redetermination of the assessed valuation, petitioner cannot avoid the effect of a quasi-judicial determination by simply failing to appear at the time and place set for the hearing, Petitioner's argument that the bankruptcy court may refer the question to a state tribunal is not in point and no fraud is involved in this case. The decision of the Court of Appeals is therefore correct.

WHEREFORE, respondents respectfully submit that the Petition for Writ of Certiorari should be denied and that the judgment of the Court of Appeals for the 9th Circuit should be affirmed.

Dated: June 24, 1949.

Respectfully submitted,

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